IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.883 OF 2005
WITH
CIVIL APPLICATION NO.1042 OF 2005

Maruti Balwant Musale & Ors. ..Appellants.
Vs.
Vithal Ramchandra Chougule & Ors. ..
Respondents.

...

Mr. P.D. Dalvi for the Appellants.

CORAM : DR.D.Y.CHANDRACHUD, J.

16th November, 2005.

P.C. :

The circumstances in which the order of the Trial Court was reversed and the matter was remanded back to the Trial Court for deciding all the issues including the maintainability of the suit have been adverted to in paragraph 8 of the impugned judgment and order dated 27th July, 2005. Two previous applications were filed by the Appellants for framing a preliminary issue on the ground that the present suit was barred by the principles of res judicata. Those applications were not pressed. The evidence was in the process of being recorded and it was at that stage that during the course of the cross examination that the Trial Court treated the question of

res judicata as a preliminary issue and disposed of the suit. The First Appellate Court has, in these circumstances, been justified in holding that it was only appropriate and proper that the Trial Court should dispose of the suit in its entirety on all issues which have been framed. There is, therefore, no merit in the Appeal which is accordingly dismissed. However, it is clarified as has been clarified by the First Appellate Court that all the issues are kept open to be urged before the Trial Court on merits.

Civil Application 1042 of 2005 does not survive in view of the order passed in the Appeal from Order and is accordingly disposed of.